

Chapter 173-167 WAC
EMERGENCY DROUGHT FUNDING

PART I
DROUGHT FUNDING--GENERAL CRITERIA

NEW SECTION

WAC 173-167-010 Funding availability to public bodies.

Ecology may provide funding to public bodies in connection with projects and measures designed to alleviate drought conditions which may affect public health and safety, including, but not limited to, conditions affecting drinking water supplies, agricultural activities, and survival of fish and wildlife.

NEW SECTION

WAC 173-167-020 Funding amounts. Funding is available in the following amounts for the following general categories of activities:

(1) \$3,350,000 is available for use to alleviate drought conditions for public agricultural water supplies.

(2) \$2,350,000 is available for use to alleviate drought conditions affecting drinking water supply facilities and utilities.

(3) \$1,000,000 is available for use to alleviate the effects of drought conditions on the state's fish and wildlife resources.

(4) \$1,500,000 is available for use to lease and purchase water rights to mitigate for the impacts of emergency ground water permits and transfers on fisheries resources in the Yakima basin.

(5) Funding will be made available to meet both immediate and future needs.

(6) Ecology will periodically reassess, and if necessary redistribute, the amount of funds available in each of the above categories to assure that the most pressing needs are effectively addressed.

NEW SECTION

WAC 173-167-030 Qualifying public bodies. These include the state of Washington, or any federal, state, or local agency, political subdivision, taxing district, or municipal corporation thereof, and those Indian tribes now or hereafter recognized as such by the federal government for participation in the federal land and water conservation program and which may constitutionally receive grants or loans from the state of Washington.

NEW SECTION

WAC 173-167-040 Eligibility for funding. To be eligible for funding, a public body, water system, water source, or water body which is connected with a project or measure must be receiving, or have been projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions. This reduction in water supply must be such that it is causing, or will cause, undue hardship for entities or for fish or wildlife that depend on the water supply. Funding or compensation must be in connection with the leasing or acquisition of water, or acquisition, construction, rehabilitation, and/or improvement of water supply distribution or delivery facilities, or in connection with other appropriate measures to assure the:

- (1) Adequate provision of drinking water to the citizens of the state;
- (2) Continuation of irrigated agriculture in the state; or
- (3) Survival of the state's fish and wildlife resources, with particular emphasis on fish stocks or wildlife species which have been identified as threatened or endangered by the state department of fish and wildlife, the federal National Marine Fisheries Service, or the federal Fish and Wildlife Service.

NEW SECTION

WAC 173-167-100 Funding conditions. Eligibility conditions for each proposed project or measure to alleviate drought conditions for public agricultural water supplies are:

(1) The proposed project or measure must be for a beneficial use of water involving a previously established activity or purpose.

(2) The proposed project or measure must assist in alleviating a water shortage.

(3) A public body eligible for funding shall initially be entitled to a grant of no more than ten percent of funds available for that general category of activities listed under WAC 173-167-020(1).

(4) A public body receiving a grant may receive additional funding in the form of a loan in the amount of no more than an additional ten percent of funds available for that general category of activities listed under WAC 173-167-020(1).

(5) A public body receiving a grant or loan must satisfy ecology as to its ability to complete the project or measure in a timely manner.

(6) A public body receiving a loan must satisfy ecology as to its ability to repay the loan in a timely manner.

(7) Priority will be given to a project or measure that provides matching funds from other state, local, or federal sources.

(8) Water derived from the project or measure must be put to beneficial use as a substitute for water not available because of a drought.

(9) Water derived from the project or measure must not be used to irrigate new lands.

(10) The proposed project or measure must not adversely impair existing rights, including both instream and out-of-stream rights.

(11) All required permits and approvals for the proposed project or measure must be obtained by the applicant prior to a loan or grant agreement being signed.

NEW SECTION

WAC 173-167-110 Eligible measures. Eligible measures that may be funded include, but are not limited to, the means for implementing water conservation procedures, acquiring alternate water sources, or temporarily transferring water rights, provided that the proposed measure represents an additional cost to the applicant as the result of drought conditions, and is not a substitute for normal water supply costs. Types of eligible measures for implementing water conservation procedures include, but are not limited to:

- (1) Irrigation scheduling programs and activities, including the necessary personnel to accomplish such activities;
- (2) Implementation of water reduction programs and activities, including the necessary personnel to accomplish such activities;
- (3) Implementation of regional water conservation programs by multiple entities;
- (4) Education programs.

Types of eligible measures for acquiring alternate water sources or temporarily transferring water rights include, but are not limited to:

- (a) Water purchase or leasing costs;
- (b) Repair or replacement costs;
- (c) Power costs.

NEW SECTION

WAC 173-167-120 Priority for funding. Priority will be given to proposed projects that need additional water supplies. Need will be measured by:

- (1) The short-term and long-term effects, in the absence of drought relief, that the water shortage would have on agricultural crops or livestock operations.
- (2) The capability and reliability of the proposed project to provide an emergency water supply to the applicant.
- (3) The percent of water shortage experienced or forecast for each applicant.

Priority will also be given to proposed measures which:

- (a) Are the most effective in achieving long-term reductions (conservation) in water requirements, represent the

more efficient use of available supplies, and will address shortages that pose the greatest economic hardship.

(b) Present no, or minimal, overall environmental impacts, including any detrimental effects to wetlands. Any such impacts should be identified to the best extent possible by the applicant at the time of application.

NEW SECTION

WAC 173-167-130 Preferences. Preference will be given to public bodies which are implementing activities in response to drought conditions which are in addition to the activities to be conducted with funding applied for under this chapter; such activities may include, but are not limited to, water conservation plans, water system efficiency improvements, and other drought contingency actions.

NEW SECTION

WAC 173-167-140 Related permits to be processed expeditiously. In keeping with the emergency nature of these provisions, ecology and all other state and local agencies with authority to issue permits or other authorizations for the proposed project or measure, will process the respective application(s) expeditiously and provide a decision(s) to the applicant within fifteen calendar days.

NEW SECTION

WAC 173-167-150 Waiver. To expedite the implementation of drought relief projects and measures, ecology can approve funding or compensation under this chapter without compliance with requirements for:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and
- (3) Competitive bidding requirements.

NEW SECTION

WAC 173-167-160 Irrigation and stock water supply projects. Potential projects that may be funded for irrigated agriculture or stock water supply projects include, but are not limited to, the following, provided that their construction would provide immediate drought relief:

- (1) Pumps and accessories.
- (2) Discharge lines.
- (3) Pipelines.
- (4) Canals and laterals with control structures.
- (5) Lining of leaky canals.
- (6) Diversion structures.
- (7) Reregulating reservoirs.
- (8) Measuring devices.
- (9) Modifying an existing source or deepening an existing well.
- (10) Developing an emergency or alternate water source.
- (11) Replacement water sources, including purchasing or leasing water or water rights to be used during the drought period.

NEW SECTION

WAC 173-167-170 Local improvement districts. Local improvement districts (LIDs) may be formed to allow funding of irrigated agriculture or stock water supply projects, provided those projects will provide immediate drought relief.

NEW SECTION

WAC 173-167-180 Applications and assistance. Applications for funding assistance under this section or any questions about funding assistance under this section should be directed to:

Ray Newkirk
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

PART III
FUNDING FOR DRINKING WATER SUPPLY PROJECTS

NEW SECTION

WAC 173-167-200 Funding conditions. Eligibility conditions for each proposed project or measure to alleviate drought conditions for drinking water supplies are:

(1) The body applying for funding must be a public body as defined in WAC 173-167-010(3). The proposed project or measure must be for a beneficial use of water involving a previously established activity or purpose.

(2) The proposed project or measure must assist in alleviating a water shortage.

(3) A public body eligible for funding shall initially be entitled to a grant of no more than ten percent of funds available for that general category of activities listed under WAC 173-167-020(2).

(4) A public body receiving a grant may receive additional funding in the form of a loan in the amount of no more than an additional ten percent of funds available for that general category of activities listed under WAC 173-167-020(2).

(5) A public body receiving a grant or loan must satisfy ecology as to its ability to complete the project or measure in a timely manner.

(6) A public body receiving a loan must satisfy ecology as to its ability to repay the loan in a timely manner.

(7) Priority will be given to a project or measure that provides matching funds from other state, local, or federal sources.

(8) Water derived from the project or measure must be put to beneficial use as a substitute for water not available because of a drought.

(9) The proposed project or measure must not adversely impair existing rights, including both instream and out-of-stream rights.

(10) All required permits and approvals for the proposed project or measure must be obtained by the applicant prior to a loan or grant agreement being signed.

NEW SECTION

WAC 173-167-210 Eligible measures. Eligible measures that may be funded include, but are not limited to, the means for implementing drought-related water conservation procedures, acquiring alternate water sources, or temporarily transferring water rights, provided that the proposed measure represents an additional cost to the applicant as the result of drought conditions, and is not a substitute for normal water supply costs. Types of eligible measures for implementing drought-related water conservation procedures include, but are not limited to:

(1) Implementation of water reduction programs and activities, including the necessary personnel to accomplish such activities.

(2) Implementation of regional drought-related water conservation programs by multiple entities.

(3) Drought-related education programs.

Types of eligible measures for acquiring alternate water sources or temporarily transferring water rights include, but are not limited to:

(a) Water purchase or leasing costs.

(b) Repair or replacement costs.

(c) Power costs.

NEW SECTION

WAC 173-167-220 Priority for funding. Priority will be given to proposed projects which need additional water supplies. Need will be measured by:

(1) The short-term and long-term effects, in the absence of drought relief, that the water shortage would have on a municipality's or utility's ability to provide drinking water in its service area, or on the survival of fish or wildlife populations.

(2) The capability and reliability of the proposed project to provide an emergency water supply to the applicant.

(3) The percent of water shortage experienced or forecast for each applicant for funding assistance.

Priority will also be given to proposed measures which:

(a) Are the most effective in achieving long-term

reductions (conservation) in water use and/or which promote the more efficient use of available supplies.

(b) Present no, or minimal, overall environmental impacts, including any detrimental effects to wetlands. Any such impacts should be identified to the best extent possible by the applicant at the time of application.

NEW SECTION

WAC 173-167-230 Preferences. Preference will be given to public bodies which are implementing activities in response to drought conditions which are in addition to the activities to be conducted with funding applied for under this chapter; such activities may include, but are not limited to, water conservation plans, water system efficiency improvements, and other drought contingency actions.

Any water system requesting funding under this section must have developed and be following a water shortage response plan or must develop a plan concurrently with the implementation of the funded project.

NEW SECTION

WAC 173-167-240 Related permits to be processed expeditiously. In keeping with the emergency nature of these provisions, ecology and all other state and local agencies with authority to issue permits or other authorizations for the proposed project or measure, will process the respective application(s) expeditiously and provide a decision(s) to the applicant within fifteen calendar days.

NEW SECTION

WAC 173-167-250 Waiver. To expedite the implementation of drought relief projects and measures, ecology can approve funding or compensation under this chapter without compliance with requirements for:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and

- (3) Competitive bidding requirements.

NEW SECTION

WAC 173-167-260 Drinking water supply projects. Eligible projects that may be funded for drought relief for drinking water supplies include, but are not limited to:

- (1) Modifying an existing source or deepening an existing well.
- (2) Developing an emergency or alternate water source.
- (3) Replacement water sources, including purchasing or leasing water or water rights to be used during the drought period.
- (4) Constructing an emergency intertie to another approved public water supply.
- (5) Transmission pipelines.
- (6) Diversion structures.
- (7) Pumps and accessories.
- (8) Source meters.
- (9) Leak detection and repair.

NEW SECTION

WAC 173-167-270 Local improvement districts. Local improvement districts (LIDs) may be formed to allow funding of drought-related water conservation projects, provided those projects will provide immediate drought relief. Funding may also be provided to LIDs to support coordinated responses to water supply emergencies, such as emergency interties, development of centralized watering points, and consolidation of small systems to larger central supplies.

NEW SECTION

WAC 173-167-280 Applications and assistance. Applications for funding assistance under this section or any questions about funding assistance under this section should be directed to:

Ray Newkirk

Washington State Department of Ecology

P.O. Box 47600
Olympia, WA 98504-7600
360-407-6630
rnew461@ecy.wa.gov

PART IV
FUNDING FOR FISH AND WILDLIFE PROJECTS

NEW SECTION

WAC 173-167-300 Funding conditions. Agreements to provide funding assistance for fish and wildlife projects to alleviate drought conditions may be made for one hundred percent of total eligible project costs.

NEW SECTION

WAC 173-167-310 Fish hatchery and rearing facilities. Eligible fish hatchery or other fish rearing facility projects that may be funded for protection from drought conditions include, but are not limited to:

- (1) Purchase and installation of water-reuse pumps;
- (2) Modifying hatchery intake and outlet structures;
- (3) Modifying stream channels adjacent to a hatchery to assure passage to the facility;
- (4) Provision and maintenance of oxygen levels in on-site and off-site ponds by purchase and installation of bottled gas (using air stones), or oxygen generation systems, or mechanical aeration;
- (5) Modification to existing wells and aeration towers;
- (6) Costs associated with emergency well operations (e.g., pumping, installation, maintenance);
- (7) Drilling new wells; and
- (8) Costs associated with fish releases or fish transfers to protect fish growth, health, and survival.

NEW SECTION

WAC 173-167-320 Fish habitat protection. Eligible projects that may be funded to protect fish habitat and assist in fish survival during drought conditions include, but are not limited to:

(1) Augmentation of instream flows through temporary transfers of diversionary surface and ground water rights.

(2) Augmentation of instream flows through temporary withdrawals of ground waters.

(3) Stream channel modification such as trenching, sandbagging, or berming to protect spawning gravels or to provide migratory channels for fish passage.

(4) Capture and relocation of stranded fish.

(5) Installation, operation, and removal of temporary fish collection facilities (weirs, existing fish-ways, etc.) and relocation of collected fish in up or downstream areas.

NEW SECTION

WAC 173-167-330 Aquatic and upland wildlife protection. Eligible projects that may be funded to protect aquatic and/or upland wildlife species and assist in wildlife survival during drought conditions include, but are not limited to:

(1) Temporary diversion of streamflow to critical bird nesting habitat or wetland habitat populated by priority species, as identified by the state department of fish and wildlife.

(2) Temporary impoundment of water in existing wetland habitat populated by priority species, as identified by the state department of fish and wildlife.

(3) Temporary diversion of streamflow to upland watering devices.

(4) Any diversion or impoundment of water described in subsections (1) through (3) of this section shall be done in a manner that does not detrimentally affect fish populations listed under the federal Endangered Species Act.

NEW SECTION

WAC 173-167-340 Affected tribes to be consulted. The department of fish and wildlife and any potentially affected Indian tribes will be consulted to verify eligibility, needs, and nature of all proposed fish-related projects and measures.

NEW SECTION

WAC 173-167-350 Applications and assistance. Applications for funding assistance under this section or questions about funding assistance under this section should be directed to:

Dave Burdick
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
360-407-6094
dbur461@ecy.wa.gov

PART V FUNDING FOR BUYING OR LEASING WATER FOR FISH

NEW SECTION

WAC 173-167-400 Funding conditions. Funding assistance for water right lease, purchase, and mitigation agreements to alleviate drought conditions will be provided under the following conditions:

- (1) Agreements may be made for one hundred percent of total eligible project costs.
- (2) Lease and purchase agreements will be made at a negotiated market price between ecology and willing sellers.
- (3) Mitigation agreements will be made at agreed-upon rates negotiated by ecology and other affected entities for the

impacts of emergency ground water permits and water transfers. The purpose for the agreements will be to secure water leases or purchases that may be used for in-place, in-time mitigation or, where water is not reasonably available, alternatives to acquire water that will provide equal or greater upstream ecological benefits.

NEW SECTION

WAC 173-167-410 Leasing and purchasing water rights. Ecology may lease or purchase valid water rights to alleviate drought conditions affecting the state's fish resources. Water rights which are leased or purchased under the authority of this rule must be located in an area receiving, or having been forecast to receive, less than seventy-five percent of its normal seasonal water supplies.

NEW SECTION

WAC 173-167-420 Terms of priority. Priority consideration for purchasing and leasing water rights will be given to water rights identified as being most likely to contribute to the survival of threatened or endangered fish stocks by the Washington department of fish and wildlife, potentially affected Indian tribes, and the federal National Marine Fisheries and Fish and Wildlife Services. To the fullest possible extent, purchasing and leasing water rights will also be based on consideration of the following priorities:

The water right to be purchased or leased:

- (1) Has sufficient documentation to allow ecology to make a tentative determination as to its extent and validity;
- (2) Has a sufficiently early priority date to ensure it will provide a benefit for restoring and protecting fish;
- (3) Was put to use in the previous year;
- (4) Will provide the relatively greatest benefit for restoring and protecting fish;
- (5) Will provide benefits in addition to restoring and protecting fish, such as meeting water quality requirements; and
- (6) Is reasonably priced within the context of the local market for water.

Lease or purchase of the water right would:

- (a) Receive a broad level of support among interested

parties;

(b) Be accomplished with partial funding from other sources;

(c) Require minimal administrative costs; and

(d) Would provide the longest possible period of benefit for fish.

NEW SECTION

WAC 173-167-430 Leasing and purchasing exceptions. Ecology will not purchase or lease:

(1) Water rights for water which cannot be used to increase streamflow in the year 2005, unless otherwise specified in other mitigation agreements;

(2) Water rights which are subject to regulation to protect minimum flows established under chapters 90.22 RCW and 173-500 WAC during the period for which ecology is seeking to enhance fish benefits.

NEW SECTION

WAC 173-167-440 Applications and assistance. Applications for funding assistance under this section or questions about funding assistance under this section should be directed to:

Dave Burdick

Washington State Department of Ecology

P.O. Box 47600

Olympia, WA 98504-7600

360-407-6094

dbur461@ecy.wa.gov